



ARIZONA SUPREME COURT ORAL ARGUMENT CASE SUMMARY



CASE SUMMARY

In re the Commitment of ROBERT FLEMMING, CV-03-0379-PR

Parties/Counsel: Robert Flemming is represented by Brick P. Storts, III.
The State is represented by Amy Pignatella Cain, Deputy Pima County Attorney.

Issues:

1. ‘Did Appellant’s waiver of his right to a hearing pursuant to A.R.S. § 36-3703 constitute a waiver of his right to an independent examination pursuant to A.R.S. § 36-3708(B) and A.R.S. § 36-3709(B)?’
2. ‘Was Appellant denied due process of law when he was denied his substantive right to an annual review pursuant to A.R.S. § 36-3708(B)?’

Facts:

Mr. Flemming plead guilty to sexual conduct with a minor and was sentenced to 10 years in prison. Before his scheduled release in 1998, the State filed a petition to detain him under the Sexually Violent Persons (SVP) Act, A.R.S. § § 36-3701 et seq. In a written agreement with the State, Mr. Flemming stipulated that he suffered from pedophilia and psychosis and was, as a result, a sexually violent person. He agreed to be committed to the State Hospital and waived various rights under the SVP statutes. On January 8, 1999, the superior court found that Mr. Flemming is a sexually violent person and ordered him committed to the State Hospital.

Pursuant to the SVP statutes, doctors at the State Hospital evaluate Mr. Flemming every year to determine whether he should remain in the State Hospital, be placed in a less restrictive alternative, or be discharged completely. The annual evaluation and progress report dated January 4, 2002, recommended that he remain in the State Hospital. Mr. Flemming disputed that recommendation, so he filed in the superior court a Notice of Filing Request for Hearing Pursuant to A.R.S. § 36-3708(B). He requested that the court order an evaluation by an independent professional and conduct a hearing to determine whether he should be placed in a less restrictive environment or be discharged. The State opposed the request on the ground that in the 1998 agreement Mr. Flemming waived an independent evaluation and hearing. On March 18, 2002, the superior court denied Mr. Flemming’s request.

Mr. Flemming appealed and the Court of Appeals affirmed. The Arizona Supreme Court granted review.

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